

STATE OF MICHIGAN  
COURT OF APPEALS

---

VIRGINIA LEWIS,

Plaintiff-Appellant,

v

HARPER HOSPITAL,

Defendant,

and

HARPER-HUTZEL HOSPITAL and DETROIT  
MEDICAL CENTER,

Defendants-Appellees.

---

UNPUBLISHED

May 2, 2006

No. 258777

Wayne Circuit Court

LC No. 02-228258-NO

Before: Markey, P.J., and Schuette and Borrello, JJ.

PER CURIAM.

Plaintiff appeals by right from the trial court's order granting summary disposition to defendants in this premises liability case. We affirm.

Plaintiff filed this negligence action against defendants, alleging that she fell on an accumulation of water in the hallway of the urgent care center of Harper-Hutzel Hospital. After she fell, plaintiff claimed that she was "full of water, my whole clothing was wet, I was wet all the way down." Plaintiff stated that the wetness began near her shoulders and went down her pant leg. According to plaintiff, she was so wet that she had to go home to change out of her two-piece suit. Plaintiff assumed that she fell on water because the liquid on her clothing did not "stink." When plaintiff looked up, she observed a mop and cones in a nearby corner.

The trial court granted defendants' motion for summary disposition on the basis that the water on the floor was open and obvious and, additionally, there was no evidence that defendants had notice of the condition.

We review a trial court's decision on a motion for summary disposition de novo. *Lockridge v State Farm Mut Automobile Ins Co*, 240 Mich App 507, 511; 618 NW2d 49 (2000). Although the trial court did not specify under which subrule it granted defendants' motion,

because the court looked beyond the pleadings it is apparent that the motion was based on MCR 2.116(C)(10).

One of plaintiff's arguments is that there was evidence that defendants created the water hazard or had actual or constructive notice of the hazard. In a premises liability action, a plaintiff must show that the defendant created the unsafe condition or that it knew or should have known of the unsafe condition. *Berryman v K-Mart Corp*, 193 Mich App 88, 92; 483 NW2d 642 (1992).

Plaintiff argues that, when viewed in a light most favorable to her, the evidence established that it was more likely than not that one of defendants' employees or agents caused the spill. We disagree. The evidence revealed that the area where the spill occurred was restricted and that visitors were granted access only through a security door that had to be opened by a staff member. However, patients in the urgent care center were entitled to have one visitor with them. Moreover, there were ambulance personnel and other service people allowed in the area. An ice machine and sink was accessible to anyone in the urgent care center and was located in the hallway. While visitors were directed to patients' rooms, there was no evidence that they were monitored at all times. The evidence does not support an inference that defendants' employees actually created the water hazard at issue. Plaintiff's conclusions to the contrary are based on impermissible speculation and conjecture. See *Berryman, supra* (while a prima facie case of negligence may be established based on legitimate inferences, inferences must be supported by sufficient evidence to remove them from the realm of conjecture).

The evidence also failed to establish defendants had actual or constructive notice of the condition. The fact that the spill was near the nurses' station and that a mop and cones were observed in a nearby corner does not establish that anyone had actual knowledge of the spill. A contrary conclusion would be impermissible conjecture. *Id.* Additionally, in order to establish constructive notice, the hazard must be of "such a character" that the defendant should have had knowledge of it or it must have "existed a sufficient length of time" that the defendant should have had knowledge of it. *Id.* But there is no evidence of when the water was deposited on the floor, how it was deposited, or the source of the water. Additionally, the record does not support an inference that people were stationed at the nurses' desk at all times and would necessarily have seen a spill. Constructive notice cannot be established.

For these reasons, the trial court properly granted defendants' motion and we do not address the other issues plaintiff raises.

We affirm.

/s/ Jane E. Markey

/s/ Bill Schuette

/s/ Stephen L. Borrello